IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1625 OF 2006,
CRIMINAL WRIT PETITION NO.1626 OF 2006,
CRIMINAL WRIT PETITION NO.1627 OF 2006

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Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders.	Court's or Judge's orders

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Mr.N.V.Vechalekar for the Petitioner
Mr.Rajesh More, A.P.P. for
Respondent-State

CORAM: A.S.OKA,J.
DATE : AUGUST 18, 2006.

P.C.:

1. Heard Shri Vechalekar for the Petitioner in these Petitions. The facts of the three Petitions are similar and therefore a reference is made only to the facts of the case in Writ Petition no.1625 of 2006.

2. The first Respondent filed a complaint under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the said Act of 1881). The learned Magistrate issued process against the Petitioner in the said complaint. The order issuing process was challenged by the Petitioner by filing a Revision

Application before the Sessions Court. The Revision Application has been rejected by the learned Sessions judge.

3. The learned Counsel for the Petitioner submitted that there was no legally enforceable debt. He submitted that admittedly the first Respondent-complainant is his tenant. The cheque was handed over in the police station. He submitted that the Respondent did not hand over possession and therefore, there was no debt payable by the Petitioner. He, therefore, submitted that the order issuing process ought to have been quashed by the learned Sessions Judge.

4. I have considered the submissions. I have also perused the complaint. It is not in dispute that there was a cheque issued by the Petitioner in favour of the Respondent and the cheque was dishonoured with the remark of the banker "refer to drawer". There does not seems to be any dispute regarding service of notice of demand and the receipt thereof. What is pleaded by the Petitioner is the defence

of the Petitioner. While examining the question of issuing process on a complaint under section 138 of the said Act of 1881, the question which is to be examined is whether the allegations made in the complaint fulfil the requirement of section 138 of the said Act of 1881. So far as existence of debt is concerned, there is a presumption in favour of the complainant under section 139 of the said Act of 1881. As held by the Apex Court in case of Monaben Ketanbhai Shah and another Vs. State of Gujarat and others reported in (2004) 7 S.C.C. page 15 the object of section 138 of preventing bouncing of cheques and sustaining the credibility of commercial transactions has to be borne in mind. The Apex Court held that the power of quashing is required to be exercised very sparingly and where factual foundation for the offence has been laid in the complaint, it should not be quashed.

5. What has been pleaded by the Petitioner is the defence of the Petitioner which will have to be

established for the purposes of rebutting presumption under section 139 of the said Act. All this is a matter of evidence to be led before the concerned Court.

6. No fault can be found with the view taken by the Revisional Court. There is no merit in the Petitions and the same are dismissed.

7. It is made clear that the observations which are made in this order are for limited purposes of considering legality and validity of the order passed by the Sessions Court and all contentions of the Petitioners in the pending complaints are expressly kept open.

JUDGE